IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

JEROME WILLIAMS, LINDA WILLIAMS and CLAUDE WILLIAMS, SR., individually and on behalf of others similarly situated,	*	
	*	
Plaintiffs,	*	
	*	
v.		**CASE NUMBER: CV-06-799-WS-B**
	*	
SAXON MORTGAGE COMPANY, et al.,	*	
Defendants.	*	

MOTION FOR ORDER CERTIFYING FOR INTERLOCUTORY APPEAL UNDER 28 U.S.C. § 1292(b)

COME NOW Plaintiffs and, pursuant to 28 U.S.C. § 1292(b), respectfully request that this Court grant them permission to file an interlocutory appeal of the Orders issued September 27, 2007 (Doc. 114) and October 25, 2007 (Doc. 118) dismissing Plaintiffs' claims as time-barred. In support of this motion, Plaintiffs aver as follows:

1. Under 28 U.S.C. § 1292(b), the issue for an interlocutory appeal must (1) involve a controlling question of law; (2) have a substantial ground for difference of opinion; and (3) materially advance the ultimate termination of the litigation. *Id.* All three grounds are satisfied here.

2. A controlling question of law for which interlocutory review is appropriate "has reference to the question of the meaning of a statutory or constitutional provision, regulation, or common law doctrine rather than to whether the party opposing summary judgment had raised a genuine issue of material fact." *McFarlin v. Conseco Services, LLC,*

381 F.3d 1251, 1258 (11th Cir. 2004) (quoting *Ahrenholz v. Board of Trustees of the Univ. of Illinois*, 219 F.3d 674, 676 (7th Cir. 2000)) (internal quotation marks omitted).

3. The controlling question of law raised by the Court's dismissal of the Plaintiffs' claims concerns the application of the common-law doctrine of equitable tolling. Specifically, the Court's rulings raise the question of whether, for purposes of the equitable tolling of TILA claims, there is an express requirement of fraudulent conduct existing beyond the non-disclosure itself. As pointed out in *Veal v. Crown Auto Dealerships, Inc.*, 236 F.R.D. 572, 580 (M.D. Fla. 2006.), the Eleventh Circuit has yet hold that there exists such a requirement. A secondary question of law is whether, assuming there is such a requirement, that requirement is met where the TILA violations are attended by affirmative misrepresentations concerning the nature, amount and payee surrounding certain real estate settlement charges?

4. The issues are dispositive of this case and "would serve to avoid a trial or otherwise substantially shorten the litigation." *McFarlin*, 381 F.3d at 1259. As currently postured, Plaintiffs' TILA claims regarding rescission remain to be litigated. Plaintiffs' claims that their loan is subject to rescission are based on the same underlying fraudulent acts involved in the question of whether the TILA non-disclosure violations are equitably tolled. If an interlocutory appeal is not granted and Plaintiffs are successful on appeal litigating the rescission claims to a final judgment, then there would have to be two separate trials on essentially the same factual issues: one for the rescission claims and one for the underlying TILA violations, after appeal. Allowing an interlocutory appeal would eliminate this possibility. If Plaintiffs are successful on the interlocutory appeal then the rescission claims and the underlying TILA violations could be litigated together. If Plaintiffs lose the

interlocutory appeal, there will be no need to litigate anything other than the rescission claims. Thus, allowing the interlocutory appeal eliminates the possibility of having to litigate separately the two sets of TILA claims and, therefore, shorten this litigation.

Respectfully submitted this 31st day of October, 2007.

/s Earl P. Underwood, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on October 31st, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel of record.

/s Earl P. Underwood, Jr.
Earl P. Underwood, Jr.